

JUN 18 1993

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Implementation of Section 8 of the Cable )  
Television Consumer Protection )

MM Docket 92-263

requested reconsiderations. GTE discussed the experience of its own telephone companies in meeting higher customer service requirements than those found in the NCTA voluntary standards. (Reply Comments, 3-4) It is confident that the cable industry will be able to adjust to local variances from the FCC's rules, and that specially burdened smaller operators will be treated fairly under the Order's waiver process.

Both NCTA and the Coalition oppose imposition of customer service standards outside the contractual process of franchising. Absent operator agreement, the Coalition would not allow any such requirements for systems of fewer than 1000 subscribers unless the franchisor could demonstrate a need to the FCC's satisfaction, based on subscriber complaints or other evidence. (Petition, 9) NCTA asserts that the only ways localities can adopt standards higher or different than the FCC's are (1) by agreement with the cable operator, or (2) by enactment of consumer protection laws of general applicability to all businesses similar to cable television operation. (Petition, 2-3)

As set forth below, NCTA's arguments are not well-founded in law, while the Coalition's claims for small-system relief can be met through the waiver process.

*Congress meant to target the cable industry,  
and did not intend service standards  
to depend on the operator's acquiescence.*

NCTA's legal argument isolates a few words from the broader statutory context. Section 632(b), 47 U.S.C. §552(b), orders the Commission to establish standards by which cable operators "may fulfill" their customer service requirements. In subsection (c)(2), the law states that enactment of general standards under (b) would not prevent a cable operator and a franchisor from "agreeing to customer service requirements that exceed" those in the FCC's rules. To permit the franchisor to raise the standards unilaterally, NCTA asserts, fails

to account for the quoted language because it doesn't allow the operator to fulfill his obligations through the FCC rules, and it renders operator consent irrelevant.

But a second part of subsection (c)(2) does not depend on franchisor-operator agreement. It declares that municipal and state laws and regulations may impose "customer service requirements that exceed the standards set by the Commission under this section" and may address "matters not addressed" by the Commission standards. NCTA attempts to explain this mandatory language by

Nothing in this title shall be construed to prevent the establishment or enforcement of any municipal law or regulation, or any state law, concerning customer service that imposes customer service requirements that exceed the standards set by the Commission under this section, or that addresses matters not addressed by the standards set by the Commission under this section. (emphasis added)

The original reference to consumer protection laws remains in the statute at (c)(1), but (c)(2) containing the passage above was added in 1992. If Congress had meant to refer to consumer protection in the generality, it need not have augmented the (c)(1) language. Instead the legislators, unhappy with cable customer service under the 1984 law, enlarged the statute in 1992 by explicit reference.

It is inconceivable that Congress would have left the remedy to depend on operators' willingness to swallow their medicine. The provision for franchisor-operator agreement does not rule out unilateral franchisor action if consent is not forthcoming.<sup>3</sup> To the contrary, Section 632(a) announces up front that localities may "establish and enforce" customer service standards. (emphasis added) If franchisors were restricted to enforcing FCC requirements (absent operator agreement to higher standards), the word "establish" would be surplusage.

While the language of the statute is clear enough to stand on its own, the explanation in the previously-cited House Report reinforces the local authority's discretion to add to FCC requirements:

[The House bill] requires the FCC to establish minimum Federal standards for customer service and consumer protection. The legislation allows local authorities to

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<sup>3</sup> The tactical use of the two options is apparent. An operator might agree to stricter standards on customer service in order to gain some franchisor concession in another area of system regulation. By the same token, a franchisor might invite the operator to accept higher obligations voluntarily, rather than risk an even more burdensome legislative outcome.

require stricter standards as part of a franchise agreement and to establish and enforce laws that impose more stringent customer service requirements.<sup>4</sup>

When the NCTA's targeted phrase "may fulfill" is read in light of the above, its intent is apparent. The FCC's minimum customer service standards represent one means for the cable operator to fulfill its obligations, so long as the franchisor chooses not to require more. Significantly, the phrase uses the contingent "may," not the imperative "shall." When Congress meant to leave no discretion, it chose the latter word in two places in subsection (b) to require the

FCC to establish and enforce laws that impose more stringent customer service requirements.

enforce” without the former reference to initial franchising or renewal.<sup>5</sup> The removal of the franchise language from Section 632(a) means that Sections 626(c)(1)(A) and (B) must be read as independent and additive.

~~Under (c)(1)(A) the chapter is to be added at renewal by whether he has~~

*The waiver process for customer service standards deserves a chance to prove its efficacy.*

The Coalition's dismissal of waiver as a means of relief for small systems burdened by FCC customer service standards is both peremptory (Petition, 4, note 9) and premature. Petitioner takes little account of the Order's agreement that 1,000 subscribers is an appropriate boundary between small systems and larger ones, and of its generally encouraging tone. (§11 and note 18)

If small system service constraints are as obvious and costly as the Coalition maintains, franchisors should prove sympathetic to waiver requests -- particularly since these will contain the local authority's views. If the operator and the authority are united in the need for waiver, and if small-system subscribers are as satisfied as the Coalition implies (Petition, 8) with the pre-existing tradeoff between service standards and rates, then it is unlikely that waiver applications will face much opposition.

Rather than assume the worst, the Coalition's members and other smaller systems should give the process of exception a chance to work.

CONCLUSION

For the reasons discussed above, the Commission should deny the petitions for reconsideration submitted by NCTA and the Coalition.

Respectfully submitted,

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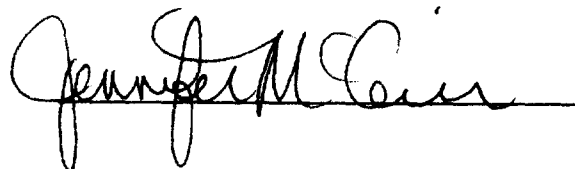
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